

COMMENTS TO PROPOSED CHANGES TO ACJA § 7-208

- e. Other than performing research to determine the legal document preparer is utilizing the appropriate form, the legal document preparer shall not perform legal research concerning particular statutes, case law or other sources of information concerning legal theory or authority on behalf of a specific client. The legal document preparer may perform such research to develop an understanding of general legal principles when the research is not done on behalf of a specific client.
- f. If a legal document preparer drafts a document that contains substantive legal statements or arguments, the legal document preparer must maintain adequate records to demonstrate that all research, analysis and legal statements and arguments were developed by the client and provided by the client to the legal document preparer for inclusion in documents prepared by the legal document preparer consistent with the requirements of subsection F(1).

Comments:

1. The above are rule ADDITIONS to our Code, not changes. These additions are inconsistent with the rest of our existing Code and everything that was initially discussed and intended by the promulgators of the Code. This addition completely emasculates the entire CLDP program. Sections (e) and (f) must not be added to our Code. These changes will consequentially harm Arizonans who desperately need access to legal services.

Here is a bit of historical information about what happened prior to 2003 and what led up to the creation of the present CLDP Code: Read Institute for Justice [article](#).

Here is an article on MSN.com published two days ago entitled, “[Why Half of Americans Can't Come Up With \\$400 in an Emergency](#).” Therefore, at least half of Americans cannot afford to hire a lawyer if their lives depended upon it.

2. “Other than performing research to determine the legal document preparer is utilizing the appropriate form...” This restricts the CLDP to only use forms and fill in the blanks. Since the inception of this program, we have always been more than scribes who merely entered general data into forms verbatim. This part of the proposed addition to our code limits CLDP’s to only research the correct form to use to prepare a legal document, and restricts the CLDP from entering anything into that form that was not given to him or her VERBATIM from the client. If a client prepared all the factual and substantive statements, and furnished all legal points and legal authorities, etc., then the client would not need a legal document preparer. The client would only perhaps need a secretary to type it up. The CLDP Code definition of a legal document preparer states that we are NOT secretaries. The Code further permits us to prepare legal documents in ANY LEGAL MATTER. These additions to the Code strip us of the right to work as was intended from the outset.

I object to this rule addition as it substantially deprives us of a right that was previously given.

3. “[T]he legal document preparer shall not perform legal research concerning particular statutes, case law or other sources of information concerning legal theory or authority on behalf of a specific client.” I contend that we must be able to perform legal research and recite *and* cite legal authorities. The Code requires us to keep abreast of current developments in the law as they relate to legal document preparation and fulfill ongoing training requirements to maintain professionalism and the skills necessary to perform our duties competently. There is no need to educate ourselves beyond selection of a particular form if this amendment is approved. We were never meant to be limited to the filling in of general data into a particular form.

Moreover, one must ask why the amendment allows a CLDP to practice law in selection of forms on behalf of a client, but not cite to a legal authority? What is the difference as to the practice of law? Someone working at the [Self-Service Center](#) is not permitted to designate what form a person needs if they come into the Court for forms. What logic is being employed here?

Also, the Court has approved many non-lawyers without any experience whatsoever to practice law as exceptions to [Rule 31](#), including allowing persons with no legal education, experience, moral or character fitness accountability to outright represent persons and entities in judicial, quasi-judicial and administrative proceedings. These proposed additions to our Code show that the Court is not equally treating classes that have exceptions to [Rule 31](#).

4. “The legal document preparer may perform such research to develop an understanding of general legal principles when the research is not done on behalf of a specific client.” The Board and Supreme Court do not have jurisdiction over a CLDP to control what research we do when the research is not done on behalf of a specific client. **This clause is unconstitutional and absurd.**

5. “...must maintain adequate records to demonstrate that all research, analysis and legal statements and arguments were developed by the client and provided by the client...” First, a client normally does not know all this information and if he or she did, they would not need a legal document preparer. This is overly burdensome for the client and for the CLDP and will have the ‘unintended’ consequence of denying the public access to legal services. It would raise the cost of legal document preparation services for the public. The proposed addition to the Code is bad from a public policy perspective. When its effect is eventually realized by the public, there will be an outcry. (Remember, one half of Americans cannot come up with \$400 in an emergency...they certainly cannot afford to pay for the extra cost of documentation that this clause requires and might as well hire a lawyer.)

I don’t believe that those that propose this addition to the Code have really understood or contemplated how laborious of a task this is and the burden that would be placed upon the CLDP AND THE CLIENT. For example and for the sake of argument, consider the many areas in a simple divorce petition that require pleading jurisdictional statements and statements which are meant to secure legal rights pursuant to the statutes and other legal authorities:

Initially, the CLDP asks for information in our Intake Questionnaire wherein we collect facts for the preparation of the document, but initially we might have a conversation to answer questions.

If a client comes and says, “I don’t want to live with that jerk of a husband any longer...I need legal help to prepare a filing for court,” I would likely answer, are you thinking of filing for dissolution of marriage or perhaps a legal separation?” The client might be surprised to know she can be legally separated and want to know how general information about the two processes to decide which route is best. Let’s say she decides on divorce, then I would ask if it was a ‘covenant marriage license’ or a ‘regular marriage license’ that they initially obtained. It is often necessary to give general legal information regarding both types of marriages, as people don’t often know about covenant marriages. Divorces involving covenant marriage require a separate set of jurisdictional statements in the pleadings pursuant to the statutes. An annulment of marriage has different grounds as well. Sometimes my client wants to request annulment, but include an additional alternative request for dissolution if the court does not find for annulment. This saves the client additional time and money. There are questions which must be asked and answered and corresponding jurisdictional statements pleaded for petitions in each action.

Then, I must inquire about the jurisdictional facts to allege such as length of time domiciled in Arizona, facts regarding irretrievable breakdown, conciliation provisions of [A.R.S. § 25-381.09](#), etc. Whether I cite to the actual statute in the petition or not, I must know the legal, statutory requirements. I must be able to give general legal information regarding the law to the client who might still think that proving adultery is grounds for a divorce. *(If a client wanted to allege adultery as legal grounds for the divorce, I would show the statute that states that the Court does not take into consideration marital misconduct in the dissolution distribution. If the client did not understand and insisted on its inclusion, I would refer the client to an attorney for a legal opinion.)*)

Our Code does permit us to discuss options with the client. The [CLDP Examination Study Guide](#) discusses the CLDP offering options (see pages 3, 4, 57, 62) as well as providing general legal information to the client. We must decline to give our opinions or advice regarding that information. We must know this information as part of our professional competency, and therefore we continue to take continuing education classes and keep abreast of changes in the legal profession.

Back to the divorce petition example, there may be issues regarding child support which require a CLDP to have a knowledge of and, sometimes, recite legal authorities such as the Arizona Child Support Guidelines or a statute. *(Interestingly, the forms of the [Maricopa County Self-Service Center](#) occasionally contain errors such as the request for an order that states: “Support payments will begin on the first day of the first month after the Judge or Commissioner signs the Decree.” This is in contradiction of [A.R.S. § 25-503\(E\)](#). I have made sure that my legal documents don’t include the SSC blatant error that would result in a major loss of money and monetary damage to my client).*

There are a myriad of examples of where substantive legal statements and arguments are made even in **the simplest pleading**. It is not a matter of whether we are authorized to practice law (as an exception to [Rule 31](#)) and make such substantive legal statements. The crux is ensuring competency to prepare documents at whatever level, simple or complex so that the public will be helped and not harmed. Those who established the program in the beginning discussed how to prevent damage to the public and a safeguard was placed in the Code:

A legal document preparer shall accept only those assignments for which the legal document preparer's level of competence will result in the preparation of an accurate document. The legal document preparer shall decline an assignment when the legal document preparer's abilities are inadequate for that assignment. ACJA § 7-208 (J)(4)(b).

This proscription applies to attorneys in their practice of law as well. If a consumer is actually damaged because a legal document preparer took an assignment exceeding his or her level of competency, there already exists a provision in the Code and a disciplinary process in place to handle the matter. There is no need to fix what is not broken. I fear that many of the complaints filed against CLDP's do not involve cases where actual damage was experienced by the consumer (versus complaints by opposing counsel or others. This was certainly the case at the outset prior to the commencement of the program in 2003. See [article](#).)

I do not believe that these proposed additions to our Code are beneficial and will harm Arizonans. These additions will completely gut the program.

Sincerely,

Cherie Koch, AZCLDP #80221